

**Department of State Health Services
Agenda Item for State Health Services Council
May 5, 2005**

Agenda Item Title: New and Amendments to Rules Relating to Statewide Immunization of Children by Hospitals, Physicians, and Other Health Care Providers and New Department of State Health Services Immunization Schedule.

Agenda Number: 5f

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background: The Disease Prevention and Intervention Section, Immunization Branch, provides services to prevent, control, reduce, and eliminate vaccine-preventable diseases in children and adults, with emphasis on interventions to improve vaccine coverage of children under 36 months of age.

Summary: The rule amendments provide clarifications to the rules and corrections to section numbers within the rule language. The rule amendments provide a new definition of the immunization record information that providers may be required to furnish on children that have been immunized or referred for immunizations and adds new language that allows the periodic review of facilities immunization records and provides a new definition of the immunization record information that facilities are required to maintain. The new section is a schedule that indicates the recommended ages for routine administration of currently licensed childhood vaccines for children through age 18 years.

Summary of Stakeholder Input to Date (including advisory committees): The department consulted with the Texas Department of Criminal Justice, Texas Youth Commission, Department of Aging and Disability Services, Department of Family Protective Services, and Texas Education Agency in developing these rules.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #5f.

Presented by: Mr. Jack Sims

Approved by: Dr. Alecia (Alex) Hathaway

Date Submitted

Title: Section Director

Contact: Ms. Victoria Brice x6658

4/11/05

Program/Division: Disease Prevention and Intervention Section

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 97. Communicable Diseases

Subchapter D. Statewide Immunization Of Children By Hospitals, Physicians, And Other Health Care Providers

Amendments §§97.101-97.102

Subchapter J. Department of State Health Services Immunization Schedule

New §97.221

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§97.101-97.102, concerning the statewide immunization of children and immunizations required upon admission of a child to the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, or the Texas Youth Commission and proposes the new §97.221, concerning the Department of State Health Services Immunization Schedule.

BACKGROUND AND PURPOSE

During the 78th Legislative session, the Texas Legislature passed House Bill 2292, implemented by Health and Safety Code, §161.004, which allows an additional exemption from immunizations for Texas children and students for reasons of conscience, including a religious belief. The implementation of this legislative mandate required minor revisions to §§97.101-97.102. The proposed amendments to §§97.101-97.102 update section numbers for accurate reference of the previous rules updates and also update numerous subsections to accurately reflect changes to the immunization requirements, which were approved in 2004, for Texas child-care facilities, public or private primary and secondary schools, and students enrolled in health-related and veterinary courses in institutions of higher education. The proposed §97.221, for the adoption of a Department of State Health Services Immunization Schedule, also requires revisions to §§97.101-97.102. The new §97.221, Department of State Health Services Immunization Schedule, will serve as an immunization reference to directors and school nurses at child-care facilities, public or private primary and secondary schools, and institutions of higher education. Physicians and hospitals will also benefit from the adoption of the Department of State Health Services Immunization Schedule as a reference for determining age-appropriate vaccination of their patients. The Department of State Health Services will make the schedule available on the Immunization Branch's web site at www.ImmunizeTexas.com. The department consulted with the Texas Department of Criminal Justice, Texas Youth Commission, Department of Aging and Disability Services, Department of Family Protective Services, and Texas Education Agency in developing these rules.

SECTION-BY-SECTION SUMMARY

Amendments to §§97.101-97.102 provide clarifications to the rules and corrections to section numbers within the rule language. Section 97.101 provides a new definition of the immunization record information that providers may be required to furnish on children that have been immunized or referred for immunizations. Section 97.102 adds new language that allows the periodic review of facilities immunization records and provides a new definition of the immunization record information that facilities are required to maintain. Section 97.221 is a schedule that indicates the recommended ages for routine administration of currently licensed childhood vaccines for children through age 18 years.

FISCAL NOTE

Casey S. Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to state or local government as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering §§97.101-97.102 is to increase the clarity and accuracy of the sections involved in this proposal. The public benefit anticipated as a result of enforcing and administering §97.221 as proposed will be to increase the availability of an immunization schedule.

REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments and new rule do not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Victoria Brice, Disease Prevention and Intervention Section, Department of State Health Services, 1100 West 49 th Street, Austin, Texas 78756, (512) 458-7111 extension 6658, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the Texas Register.

STATUTORY AUTHORITY

The amendments and new rule are proposed under Health and Safety Code, §81.023, which requires the State Health Services to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules reasonably necessary for the department to administer its regulatory and administrative functions.

The amendments and new rule affect Health and Safety Code, §81.023, and Chapter 1001; Government Code, Chapter 531; Texas Education Code, §§38.001 and 51.933; and Human Resource Code, §42.043.

Legend: (Proposed Amendment (s))

Single Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§97.101. Statewide Immunization of Children.

(a) Every person less than 18 years old shall be immunized against vaccine-preventable diseases in accordance with the immunization schedule adopted by the Executive Commissioner of the Health and Human Services Commission as referenced in §97.221 of this title (relating to the Department of State Health Services Immunization Schedule) **[Board of Health]**. The immunization requirements are also adopted as a statewide "control measure" for communicable diseases as that term is used in the Health and Safety Code, §§81.081-81.082 **[§81.081 and §81.082]**, and as an "instruction of the department" as that term is used in the Health and Safety Code, §81.007.

(b) The vaccine requirements shall be those required for children and students under §§97.61-97.72 **[97.77]** of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education). Additional copies of Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education may be obtained from the Department of State Health Services, **[Texas Department of Health]** 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

(c)-(e) (No change.)

(f) If requested by the local health unit, local health department, public health district, or the department, the provider shall furnish identifying information on those children who have been immunized or referred for immunizations. The information must include at least the name and date of birth of the child, the child's address, the name and telephone number of a parent or guardian, the month, day, and year of vaccine administration, the name or type of vaccines administered, the name and address of the provider that administered the vaccines; or other evidence of immunity to a vaccine-preventable disease. **[The information must include at least the child's name, child's date of birth, child's address, a parent's name, a parent's telephone number, and if applicable, the name or type of vaccine administered, and the month, day, and year that the vaccine was administered.]**

(g) Children are exempt from immunizations as referenced in §97.62 of this title (relating to Exclusions from Compliance). **[if:]**

[(1) immunization conflicts with the tenets of an organized religion to which parent, managing conservator or guardian belongs; or]

[(2) the immunization is medically contraindicated based on an examination of the child by a physician licensed to practice by any state in the United States.]

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§97.102. Immunizations Required upon Admission of a Child to the Texas Department of Criminal Justice, **[Texas Department of Mental Health and Mental Retardation]** Department of Aging and Disability Services, Department of State Health Services, or the Texas Youth Commission.

(a) On admission of a child to a facility of the Department of Aging and Disability Services, Department of State Health Services **[Texas Department of Mental Health and Mental Retardation]**, the Texas Department of Criminal Justice, or the Texas Youth Commission, the facility physician shall review the

immunization history of the child and administer any needed immunization(s) or refer the child for immunization(s) to another health care provider. Required immunizations are those set out in §97.63 of this title (relating to Required Immunizations). Copies of Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education may be obtained from the Department of State Health Services [Texas Department of Health], 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

(b) The provisions of §97.62 of this title (relating to Exclusions of Compliance) and §§97.66-97.69 [§97.71] of this title (relating to Provisional Enrollment) apply to this section.

(c) The facility covered by this section shall keep an individual's immunization record during the child's period of admission, detention, or commitment in the facility. Representatives of the department and local health authorities may advise and assist these agencies in meeting these requirements. The department may conduct periodic review of these agencies' identified immunization records in order to allow public health officials to obtain information required for public health purposes. The information must include at least the name and date of birth of the child, the child's address, the name and telephone number of a parent or guardian, the month, day, and year of vaccine administration, the name or type of vaccines administered, the name and address of the provider that administered the vaccines; or other evidence of immunity to a vaccine-preventable disease. **[The records shall be open to inspection at all reasonable times by a representative of the local health unit, local health department, public health district or the department. The immunization record will record the name or type of vaccine administered; and the month, day and year that the vaccine was administered.]**

[(d) This section does not affect the requirements of the Education Code, §2.09 and §2.091, or the Human Resources Code, §42.043, or sections of this chapter written under their authority.]

§97.221. Department of State Health Services Immunization Schedule.

This schedule indicates the recommended ages for routine administration of childhood vaccines.

Figure: 25 TAC, §97.221.